The point was made by the defendants that the courts of the United States have exclusive jurisdiction in cases of collision on navigable waters.

There was a judgment for the plaintiff, on the affirmance of which by the Supreme Court the defendants sued out this writ.

Mr Alexander M. Watson in support of the motions.
Mr Hill Burgwin, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The single question in this case is, whether the courts of the United States, as courts of admiralty, have exclusive jurisdiction of suits *in personam*, growing out of collisions between vessels while navigating the Ohio River. This is a Federal question, and gives us jurisdiction, but we cannot consider it as any longer open to argument, as it was decided substantially in *The Moses Taylor*, 4 Wall. 411, *The Hine* v *Trevor*, id. 555, *The Belfast*, 7 id. 624, *Leon* v *Galceran*, 11 id. 185, and *Steamboat Company* v *Chase*, 16 id. 522. The Judiciary Act of 1789 (1 Stat. 73, sect. 9), reproduced in sect. 563, Rev Stat., par. 8, which confers admiralty jurisdiction on the courts of the United States, expressly saves to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it. That there always has been a remedy at common law for damages by collision at sea cannot be denied.

The motion to dismiss is overruled, and that to affirm granted.

Judgment affirmed.

NOTE. — *Brown* v. *Davidson*, error to the Supreme Court of the State of Pennsylvania, involved the same question as the preceding case. It was submitted by the same counsel and determined in the same manner.

RAILWAY COMPANY v. HECK.

Neither the charge of the court below, if no exception was taken thereto before the final submission of the case to the jury, nor the granting or the refusing a new trial, is subject to review here.

ERROR to the Circuit Court of the United States for the Northern District of Illinois.

The facts are stated in the opinion of the court.

Mr E. Walker for the plaintiff in error.

Mr O. B. Sansum, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

It does not appear from this record that any exceptions were taken in the progress of the trial to what was done by the court below Nearly three weeks after the trial was concluded and a verdict rendered, a motion was made for a new trial, because of certain alleged errors in the charge, but it is nowhere shown that they were noted or brought to the attention of the court before the verdict. Certainly no exceptions were taken. A trial court may, in the exercise of its judicial discretion, grant a new trial, if convinced that its charge was wrong, even though its attention was not called to the error complained of before the case was finally submitted to the jury But not so with us. Our power is confined to exceptions actually taken at the trial. The theory of a bill of exceptions is that it states what occurred while the trial was going on. Time is usually given to put what was done into an appropriate form for the record, but, unless objection was made and exception taken before the verdict, no case is presented for a review here of the rulings at the trial. This has been settled in this court since *Walton* v *United States*, 9 Wheat. 651. The cases are numerous to that effect.

We have uniformly held that, as a motion for new trial in the courts of the United States is addressed to the discretion of the court that tried the cause, the action of that court in granting or refusing to grant such a motion cannot be assigned for error here. *Schuchardt* v *Allens*, 1 Wall. 359, *Insurance Company* v *Barton*, 13 id. 603.

Judgment affirmed.